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15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**

17 ROBIN BAIN,
18 Plaintiff,
19 vs.
20 FILM INDEPENDENT, INC., *et al.*,
21 Defendants.
22
23 *And all related counterclaims.*

24 Case No.: 2:18-cv-04126-PA-JEM
25 Honorable Percy Anderson Presiding

26 **JOINT RULE 26(f) REPORT**

27 Scheduling Conference: 9/24/2018
Time: 10:30 AM
Courtroom: 9A – 1st Street

28 By and through their attorneys of record, who are set forth below, the parties
have prepared and hereby submit this jointly signed Scheduling Conference report
following the conference of counsel required by Federal Rule of Civil Procedures
16(b) and 26(f), Central District Local Rule 26-1 and this Court's Order setting a
Scheduling Conference.

1 **A. STATEMENT OF THE CASE**

2 Plaintiff/Counterclaim Defendant Bain's Contentions

3 Plaintiff Robin Bain ("Bain" or "Plaintiff") is a Los Angeles-based
4 filmmaker. Bain owns the copyright in the film *Girl Lost* (previously titled
5 "Nowhereland") (the "Film"), which features Defendant Jessica Cesaro, also
6 known as Jessica Haid ("Haid" or "Defendant"). Haid asked Bain to release
7 her scenes from the Film for use on an acting reel to promote Haid's career. As
8 the Film had not yet been released, Bain declined. Prior to the Film's release
9 and without Bain's authorization, Haid obtained a watermarked copy of the
10 Film and used all or some of fourteen (14) different scenes, including those
11 comprising the heart of the Film and the Film's ending, in an acting reel. The
12 watermark was removed from the scenes in the preparation of the reel, and the
13 reel was made available for public viewing. Bain sought to resolve this matter
14 with Haid and her co-infringers in lieu of litigation, but no resolution could be
15 reached.

16 Haid responded to Bain's claims by filing counterclaims of her own
17 concerning the production of the Film and her compensation. Those claims fail
18 for various reasons that will be addressed elsewhere.

19 Plaintiff estimates that recoverable damages, including without
20 limitation Defendant's disgorgable profits, Plaintiff's actual damages,
21 attorneys' costs, and pre-judgment interest on her copyright claim and Digital
22 Millennium Copyright Act claim are likely in excess of \$100,000.00.

23 Defendant/Counter-Claimant Haid's Contentions

24 Defendant / Counter-Claimant Haid was employed by Plaintiff / Counterclaim
25 Defendant Bain to work on the production for the Film which was then titled
26 "Nowhereland." Bain engaged Haid to create a sizzle reel and raise funds for the
27 Film on the premise that Haid would be cast in the role of "Shara" and that, in

1 addition to monetary compensation that was below minimum wage, Haid would be
2 allowed to use her performance from the Film in her acting reel. Permission to use
3 footage of the Film in Haid's acting reel was part of the consideration for her
4 performance during the production of the Film.

5 Throughout the course of Haid's employment, Haid endured severe hardship
6 and bullying in hopes that performing the work would be worth obtaining an acting
7 reel in the end. Instead, Bain violated numerous Labor Code violations, including
8 breach of contract, fraud, negligent misrepresentation, and failure to provide a safe
9 work environment. When Haid finally obtained a copy of footage to use in her acting
10 reel, Bain sued Haid for copyright infringement and violation of the Digital
11 Millennium Copyright Act.

12 Defendant estimates that recoverable damages, including without limitation
13 Defendant's actual damages, statutory damages, punitive damages, attorneys' fees,
14 and pre-judgment interest on her claims for Labor Code violations, breach of
15 contract, fraud, negligent misrepresentation, and failure to provide a safe work
16 environment are likely in excess of \$100,000.00.

17 Per the employment agreement executed by Haid and Bain, all claims arising
18 out of Haid's employment, including all of the claims and counter-claims in this case,
19 are subject to binding arbitration. Therefore, Haid has initiated her counter-claims
20 against Bain to preserve her rights in this case, but will subsequently file a Motion to
21 Compel Arbitration to have this matter stayed pending a decision in arbitration.

22

23 **B. SUBJECT MATTER JURISDICTION**

24 This action arises under the Copyright Act of 1976, Title 17 U.S.C. § 101 *et*
25 *seq.* Accordingly, this Court has federal question jurisdiction under 28 U.S.C. §§
26 1331 and 1338(a). Concurrently, this Court has supplemental jurisdiction over the
27 counter-claims brought by Haid, pursuant to 28 U.S.C. § 1337.

1 **C. LEGAL ISSUES**

2 **Plaintiff/Counterclaim Defendant Bain's Contentions**

3 The legal issues in this case involve Bain's ownership of the copyright
4 in the Film and Haid's infringement thereof, including Haid's access to the film
5 and the substantial similarity between the Film and the scenes featured in
6 Haid's acting reel. Secondary liability is at issue as well as direct liability for
7 infringement. Legal issues concerning heightened damages for willful
8 infringement and for removal of Bain's copyright management information in
9 contravention of the Digital Millennium Copyright Act are also present.

10 **Defendant/Counter-Claimant Haid's Contentions**

11 The legal issues in this case involve the promises and contractual
12 obligations that Plaintiff/Counterclaim Defendant Bain committed to Haid as
13 consideration for Haid's performance in the Film. Bain repeatedly promised
14 that Haid's performance would "look great for her acting reel," but
15 subsequently filed this instant suit against Haid the moment that an acting reel
16 was obtained.

17 Issues also include Bain's liability during her role as Haid's employer
18 for committing numerous Labor Code violations, breach of contract, fraud,
19 negligent misrepresentation, and failing to provide a safe work environment.
20 Any alleged violation of Copyright or the Digital Millennium Copyright Act
21 are subject to an applicable defense. Furthermore, the entirety of this dispute is
22 subject to binding arbitration.

23
24 **D. MANUAL FOR COMPLEX LITIGATION**

25 The Parties do not contemplate this case to invoke any part of the
26 complex litigation manual; thus, the parties do not propose any modifications
27 of the procedures set forth in that manual for this particular action.

1
2 **E. PARTIES, EVIDENCE, etc.**

3 Plaintiff/Counterclaim Defendant Bain's Contentions

4 The parties are Robin Bain, Defendant Jessica Cesaro, also known as Jessica
5 Haid ("Haid" or "Defendant").

6 Should Defendant reveal in Initial Disclosures or discovery responses any other
7 individuals or entities involved in the chain of alleged infringement of Bain's Film,
8 Bain will move to add such individuals or entities as parties to this action.

9 Bain has no corporate parents, subsidiaries, or affiliates that are implicated in
10 this litigation.

11 Defendant/Counter-Claimant Haid's Contentions

12 The parties in this case are Plaintiff/Counterclaim Defendant Bain and
13 Defendant/ Counterclaimant Haid. Haid is informed that Defendant LA Media
14 Works, Corp. ("LA Media") was recently served and has yet to appear in this case.
15 Haid is also informed that Defendant Film Independent, Inc. has been dismissed from
16 this case.

17 Haid has recently learned the identity of the company that was allegedly acting
18 as Haid's employer during the relevant times of this case in lieu of Bain, and is
19 informed and believes that this company is an alias, corporate parent, subsidiary, or
20 affiliate of Bain. Haid anticipates amending her Counterclaims to include the name
21 of this newly discovered company as a counterclaim defendant.

22
23 **F. INSURANCE**

24 The Parties do not have insurance coverage for the claims at issue.

1 **G. MAGISTRATE JUDGE**

2 The Parties do not stipulate to the use of a magistrate judge unless
3 specifically required under the applicable local rules.

4

5 **H. ADDING CLAIMS/PARTIES**

6 Plaintiff/Counterclaim Defendant Bain's Contentions

7 Plaintiff does not anticipate that additional parties will be added to the
8 case; however, should discovery reveal that any othr parties participated in the
9 infringement at issue in this action which are within the jurisdiction of this
10 Court, Plaintiff will seek to amend the Complaint to add said parties, so long as
11 they are timely disclosed by Defendant.

12

13 Defendant/Counter-Claimant Haid's Contentions

14 Haid has recently learned the identity of the company that was allegedly
15 acting as Haid's employer during the relevant times of his case in lieu of Bain.
16 Haid anticipates amending her Counter-Claims to include the name of this
17 newly discovered company as a counterclaim defendant which, to Haid's
18 knowledge, is an alias, corporate parent, subsidiary, or affiliate of Bain.

19 Except as stated above, Defendant Haid does not anticipate that
20 additional parties will be added to the case; however, should discovery reveal
21 that any other parties participated in the infringement at issue in this action
22 which are within the jurisdiction of this Court, Defendant Haid will seek to
23 amend the Counter-Claims to add said parties, so long as they are timely
24 disclosed by Plaintiff.

1 **I. STATUS OF DISCOVERY**

2 The Parties anticipate entering into an appropriate stipulated protective order,
3 if necessary, in order to allow for the exchange of confidential and/or sensitive
4 information.

5 The Parties anticipate that they will serve their Initial Disclosures as required
6 by Fed. R. Civ. P. 26.

7 **J. DISCOVERY PLAN**

8 Plaintiff and Defendant anticipate utilizing all discovery allowed under Rule 26,
9 including depositions, requests for documents, interrogatories and requests for
10 admissions. The dates by which the above will be accomplished are set forth below.

11 Plaintiff anticipates that discovery will be needed regarding the obtainment of
12 the unauthorized copy of the Film, the willfulness of Defendant, and the identities of
13 the parties which aided Defendant in the perpetration of the infringement at issue in
14 this action. The parties agree to allow for the electronic service of discovery provided
15 that all documents, requests, and responses that are served electronically are followed
16 by physical copies of the same wherever reasonably practicable.

17 Provided that this case is not stayed pending a determination in arbitration,
18 Defendant anticipates that discovery will be necessary with regard to Bain's conduct
19 and directions to cast and crew throughout the course of production for the Film,
20 promises that were made by Bain to Haid regarding permission for Haid to use Film
21 footage, Bain's intent when said promises were made to Haid, the amount of control
22 and direction that Bain had over Haid in connection with Haid's acting performance in
23 the Film, the amount of damages suffered by Bain for her alleged claims against Haid
24 (if any), working conditions during the production of the Film, and the involvement of
25 any additional third parties who either acted on behalf of Bain or had a controlling
26

1 influence over Bain's conduct and directly or indirectly contributed to the harm
2 suffered by Haid.

3

4 **K. DISPOSITIVE MOTIONS**

5 **Plaintiff/Counterclaim Defendant Bain's Contentions**

6 Plaintiff anticipates filing a Motion for Partial Summary Judgment for
7 liability as to Defendant for copyright infringement by the deadline for
8 dispositive motions. Plaintiff may also seek adjudication of several of
9 Defendant's counterclaims at the summary judgment stage. Plaintiff also will
10 not seek bifurcation.

11

12 **Defendant/Counter-Claimant Haid's Contentions**

13 Defendant Haid anticipates filing a Motion to Compel Arbitration on the basis
14 that the claims in this case are governed by the arbitration provision in Haid's
15 employment agreement. Otherwise, provided that this case is not stayed pending a
16 determination in arbitration, should any claims remain pending before this Court after
17 a Motion to Compel Arbitration is heard, Haid anticipates filing a Motion for
18 Summary Judgment on the basis that Haid is not liable as to any of Plaintiff Bain's
19 allegations, and that Bain is liable to Haid for breach of contract, breach of good faith
20 and fair dealing, fraud, failing to provide a safe work environment, and/or numerous
21 Labor Code violations.

22

23 **L. SETTLEMENT**

24 No meaningful settlement discussions have yet taken place.

25 Pursuant to Local Rule 16.5-5, the parties have agreed they would prefer
26 to institute Central District Settlement Procedure No. 2.

27

28

M. TRIAL ESTIMATE

All Parties have requested a jury trial. In the event that this case is *not* stayed pending a determination on arbitration, the Parties estimate the trial in this matter to last 5 court days. See below for a recitation of the Parties' proposed schedule of dates.

- Last day to add claims or parties: November 19, 2018
- Discovery cut-off: May 31, 2019
- Opening Expert Disclosures: June 14, 2019
- Expert Rebuttal Disclosure: July 5, 2019
- Expert Discovery cut-off: July 26, 2019
- Last Day to File Motions: September 16, 2019
- Mediation cut-off: August 30, 2019
- Pre-trial conference: January 13, 2020
- Trial: January 28, 2020

WHEREUPON, the parties, by and through their respective attorneys of record, hereby jointly submit this Joint Report.

Dated: September 10, 2018 By: /s/ Justin M. Gomes
Scott Alan Burroughs, Esq.
Trevor W. Barrett, Esq.
Justin M. Gomes, Esq.
DONIGER /BURROUGHS
Attorneys for Plaintiff

Dated: September 10, 2018 By: /s/ John R. Baldivia
David Albert Pierce, Esq.
John R. Baldivia, Esq
PIERCE LAW GROUP LLP
Attorneys for Defendant and Counter-
Claimant, JESSICA CESARO, professionally
known as “JESSICA HAID”